IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

CRP.No. 1643 of 2000(H)

(AGAINST THE ORDER DAATED 29/02/2000 IN I.A.6298/1999 IN OS.88/1998 ON THE FILES OF THE PRINCIPAL SUB COURT,ERNAKULAM)

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REVN. PETITIONERS:PETITIONERS:PLAINTIFFS:

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1. **DR.ASHA VITHAL SARAF, D/O.LATE V.G.SARAF, SARAF APARTMENTS, SAHODARAN AYYAPPAN ROAD, VYTTILA, KOCHI – 19.**

2. **NALINIBAI VITHAL SARAF, W/O.LATE V.G.SARAF,..DO...DO.....**

3. **LATA ARAVIND SARAF, W/O.ARAVIND VITHAL SARAF,..DO..DO...**

4. **ULHAS VITHAL SARAF, S/O.LATE V.G.SARAF, 104 – LAXMI BUILDING, LT.P.N.KOTNIS MARG, MAHIM, MUMBAI – 16.**

5. **DR. ANILKUMAR VITHAL SARAF, S/O.LATE V.G. SARAF, .DO.DO..DO.....**

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS: RESPONDENTS:DEFENDANTS:

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1. **AVINASH VITHAL SARAF, S/O.LATE V.G.SARAF, VINAYAKA, PALLIYIL LANE, DIWANS ROAD, KOCHI-16.**

2. **DR.NIVEDITA SANGANI, D/O.ARAVIND V.SARAF, SARAF HOUE, WILLINGTON ISLAND, KOCHI – 3.**

BY ADV. SRI.R.S.KALKURA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.4800/2001 IN C.R.P.NO.1643/2000 H

DISMISSED

12/09/2007 **SD/-PIUS C.KURIAKOSE, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

C.R.P. No. 1643 OF 2000

Dated this the 12th day of September, 2007

O R D E R

Impugned in this Civil Revision Petition, under Section 115 of the CPC, is an order passed by a learned Subordinate Judge dismissing an application filed by the plaintiff for directing the 1st respondent-first defendant to produce certain documents mainly, Form No.18 declarations allegedly under the custody of the 1st respondent. The 1st respondent filed a counter affidavit denying that he is having custody of the declarations. The learned Subordinate Judge noticed that no evidence whatsoever was produced by the petitioners to show that the 1st respondent is having custody of the documents in question. Under the impugned order, the learned Subordinate Judge has permitted the petitioner to adduce evidence during trial on the question as to whether the 1st respondent is having actual custody of the documents. I dismiss the Civil Revision Petition, however, I direct the learned Subordinate Judge to take a decision on the question as to whether the 1st respondent is having custody of the documents in question and whether there is justification for drawing adverse inferences against the 1st respondent for the non-production of the documents, even before the

final arguments in the suit are heard. Such a decision will be taken on the basis of the evidence which comes on record at trial.

PIUS C. KURIAKOSE, JUDGE

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